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Supreme Court, U.S.
FILED
MAY 30 1987
JOSEPH F. SPANIOL, JR.
CLERK

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1986

o

IRMGARD MARIA HARDIE,

Petitioner,

vs.

PHILIP WILLIAM HARDIE, MD.,

Respondent.

o

PETITION FOR WRIT OF CERTIOARARI TO THE SUPREME COURT OF THE STATE OF ALASKA

Irmgard Maria Hardie
Petitioner Pro Se
1811 2-G Bairsford Drive
Columbus, Ohio 43232
(614) 863-9485

QUESTIONS PRESENTED

A. Is it an Abuse of Discretion by the Alaska Supreme Court, under two judgments and decrees for alimony from two diverse states, to deny alimony support from a wealthy physician to a partially blind, 62 year old cancer victim ex-wife?

B. Is it an Abuse of Discretion by the Alaska Supreme Court and a violation of 28 USC 1738 failing to enforce a First and Final Judgment from the State of Florida entered and first recognized by Alaska, and failing to reconsider an original Alaska judgment for alimony?

C. Is it an Abuse of Discretion by the Alaska Supreme Court to first grant Petition for Review and then deny the review of a Superior Court Judge's back-dated Order of December 12, 1986, denying Petitioner alimony support in the seventh year, in violation of 28 USC 1738 Full Faith and Credit and Alaska Statute AS 25.24.160, without a hearing and thus without due process of law?

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No._____

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1986

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IRMGARD MARIA HARDIE,

Petitioner,

vs.

PHILIP WILLIAM HARDIE, MD.,

Respondent.

o

PETITION FOR WRIT OF CERTIOARARI TO THE SUPREME COURT OF THE STATE OF ALASKA

The Petitioner, Irmgard Maria Hardie, respectfully prays that a writ of certiorari issue to review the order of the Alaska Supreme Court of April 10, 1987.

OPINION BELOW

The Supreme Court of the State of Alaska granted Petition for Review on

March 17, 1987 and denied it on April 10, 1987. Copies of the Orders are attached as Appendices C and D.

JURISDICTIONAL STATEMENT

The State Courts of Alaska assumed jurisdiction over this divorce in 1971, pursuant to Alaska Statute AS 25.24.100 (Residency Requirement for Military Personnel), Appendix A-3. Petitioner filed for reinstatement of alimony on October 14, 1986 because of necessity and it was denied by Order of December 12, 1986 (Carlson, Superior Court Judge, Anchorage, Alaska). Petitioner filed for Review of the Order in the Supreme Court of the State of Alaska on February 6, 1987. The Petition for Review was granted on March 17, 1987 and then denied on April 10, 1987 without opinion.

The jurisdiction of this Court to review the order of the Supreme Court of Alaska is invoked pursuant to 28 USC 1257(3).

FEDERAL AND STATE STATUTES AND CONSTITUTIONAL QUESTIONS INVOLVED

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STATEMENT OF THE CASE

After this Court denied certiorari on October 6, 1986, Hardie v. Hardie, US 86-99, Petitioner, pursuant to two original judgments and decrees for alimony from two

diverse states, Florida and Alaska, Appendices G and I, filed pleadings for reinstatement of alimony in the Superior, Court Third Judicial District for the State of Alaska. Judge Victor D. Carlson denied for seven years enforcement of the Florida judgment for alimony and therefore Petitioner attempted to have Judge Carlson recuse from the case for extreme prejudice, bias and partiality. Judge Carlson, by his Order of November 21, 1986, failed to recuse from the case. By an Order of December 5, 1986, Judge Karen Hunt failed to remove Judge Carlson from the case. On December 12, 1986, without hearing the case, and without writing an opinion, Judge Carlson again denied Petitioner relief and alimony. The Order of December 12, 1986 was served on Petitioner on January 13, 1987 (Appendix E-1). Petitioner filed Petition for Review of these Orders in the Supreme Court of Alaska on February 6, 1987. Petition for Review was

granted on March 17, 1987, and denied on April 10, 1987 (Appendices C and D).

Petitioner alleges that she is invidiously discriminated against in the Alaska State Courts because she derives from Germany and justice is denied her. In the case at bar, the Alaska Supreme Court fails to invoke its own criteria of Merrill v. Merrill, 368 P.2d 546 (1961); Messina v. Messina, 583 P.2d 804 (1978); Schoning v. Schoning, 550 P.2d 373 (1976); Hinchey v. Hinchey (I) 625 P.2d 297 (1981); Hinchey v. Hinchey (II), 722 P.2d 949 (1986); Gabaig v. Gabaig, 717 P.2d 835 (1986); Morlan v. Morlan, 720 P.2d 804 (1986), Bussell v. Bussell, 623 P.2d 122 (1981); Burrell v. Burrell, 696 P.2d 157 (1984); Ryfeul v. Ryfeul, 650 P.2d 369 (1982); Groff v. Groff, 408 P.2d 998 (1965); Stroecker v. Stroecker, 429 P.2d 384 (1967) and denies alimony from an ex-husband who is a wealthy physician who accumualted by undue process

of law $100,000.00 in alimony arrearages in his favor. The Alaska Supreme Court ignores the Florida Judgment and Decree, Appendix G, and it is in violation of 28 USC 1738 Full Faith and Credit, Appendix A-2.

The Orders by Judge Carlson of December 12, 1986, and the Alaska Supreme Court of April 10, 1987, denying relief to Petitioner, issued without a hearing are in violation of the Alaska Constitution which provides for equal treatment under their laws, Art. I, Para. 7. Discrimination and prejudice for ethnic reasons are not unknown to this Court. In Brinkerhoff-Faris Co. v. Hill, 281 U.S. 673 (1930), the Court held:

Note 2. "...the judgment violates the due process of law, in its primary sense of an opportunity to be heard and to defend one's substantive rights. At 678.

Note 4. "Whether acting through its judiciary or through its legislature, a State may not deprive a person of all existing remedies for the enforcement of a right, which the State has no power to

> destroy, unless there is, or was afforded to him some real opportunity to protect it. At 682.

Petitioner is deprived by the Alaska Supreme Court the Equal Protection under the Fourteenth Amendment due process clause by denying her access to the courts to claim and defend her rights to alimony pursuant to Alaska Statute AS 25.24.160, the Florida First and Final Judgment and Decree initially recognized by Alaska, FLA 71-3131 C, AS 71-801 Hardie v. Hardie, and an original Alaska Decree and Judgment, App. E and G. The State Courts of Alaska deprive Petitioner of her property interests without a hearing as to her substantive rights. It is the mandate of this Court that the opportunity to be heard must precede any actual deprivation of private property. The alimony arrearages of $100,000.00, accumulated without due process and without hearings in the doctor's favor and to the detriment of Petitioner.

Sniadach v. Family Finance Corp., 395 US 337 (1969); Fuentes v. Shevin, 407 US 67 (1972). The ultimate judicial determination of the doctor's liability is inadequate. Phillips v. Commissioner, 283 US 589-596, Id. at 611.

Pursuant to this Court's criterion in Armstrong v. Manzo, 380 US 545, 552 (1965), it is the fundamental requirement of due process to be heard and it is an opportunity which must be granted at a meaningful time and in a meaningful manner.

The Alaska Supreme Court violated not only its own rules, but the State laws as well by deciding the case without argument, without rendering an opinion and assumed sua sponte that it can deny alimony support to Petitioner and deprive her of life, liberty and property without procedural and substantive due process in violation of the Fourteenth Amendment.

The intent of the Alaska State Legislature by enactment of AS 25.24.160, Appendix

A-3, attempted to accomplish what the Alaska Supreme Court did in Hinchey v. Hinchey, I and II, supra, to wit, give just awards in divorce cases. In the case at bar, the injustices and transgressions are ominous. The violation is less clear when that result is accomplished by the state judiciary in the case of ignoring state law. The federal guaranty of due process attends to state action through its judicial as well as through its legislative, executive, or administrative branch of government. Robinson v. Arivoshi, 441 F.S. 559 (D.C. Hawaii, 1977). Brinkerhoff-Faris Co. v. Hill, 281 US 673 (1930).

Petitioner is a 62-year-old cancer victim, a diabetic, with a severe arthritic condition and partially blind, and is in desperate need of support from the physician ex-husband who was awarded particularly advantageous treatment by the Alaska judges. Petitioner lives on a level of poverty and

resents the treatment awarded her by the Alaska State courts who acted in total disregard to Alaska laws, statutes, precedence law and rules, and in violation of the Fourteenth Amendment and 28 USC 1738. Citing Alaska Statute AS 25.24.160, p. 70, verbatim:

> "When a husband brings a suit for divorce, the granting of alimony to the wife is almost a matter of course, for the presumption of the law is she has no separate means, as the husband usually holds the purse strings." Van Atta v. Van Atta, 6, Alaska 266 (1920).

This Court held in Parratt v. Taylor, 451 US 527 (1981):

> "Nothing in the Fourteenth Amendment protects against all deprivation of life, liberty or property by the State, but the Fourteenth Amendment protects only against deprivations without due process of law." Id. at 537.

At diverse junctures during the state court litigation, alimony was taken from Petitioner without due process of law, without notice or service of orders and without hearings. Parratt v. Taylor, 451 US at

537-541 (1981). Reinstatement of alimony was denied to Petitioner by the Alaska Supreme Court by denial of Petition for Review of Judge Carlson's Order of December 12, 1986, a back-dated Order, in violation of the due process criterion of this court. Mullane v. Central Hanover Trust Co., 339 US 306 (1950). Two Decrees and Judgments for alimony by two diverse states are in essence a property right and should not be taken without a hearing which is due process.

REASONS FOR GRANTING THE WRIT

The Alaska Supreme Court erred in denying the Petition for Review of diverse Orders by the Alaska Superior Court and denial of alimony is an abuse of discretion.

Compromising alimony in this particular case is abuse of discretion endangering Petitioner's life. Petitioner is an uninsurable cancer victim, a diabetic, and has annual income of approximately $10,000.00, while the ex-husband, a physician, director

of Alaska Psychiatric Institute, Anchorage, Alaska, has a salary of $86,000.00 per annum, a Colonel's pension from the U. S. Army of approximately $40,000.00, and a pension from Aleyska Pipeline Co. The alimony awards initially given to Petitioner were inequitable, unjust and the little the doctor had to pay, he failed to pay. His cruel acts of nonsupport or poor support were sanctioned by the Alaska court system at any given time since 1972. Alimony was compromised by undue process of law. Review of this case by the Alaska Supreme Court would appear to be mandatory in the name of justice and pursuant to the Laws of Equity.

Pursuant to the Due Process Rights of the Fourteenth Amendment of the United States Constitution, and 28 USC 1738, and Alaska Statute AS 25.24.160, the Order of April 10, 1987 by the Alaska Supreme Court should be reversed and the case remanded for trial by jury. App. D-1.

For the reasons set forth above, it is respectfully submitted that this Petition for a Writ of Certiorari should be granted.

Dated this 28th day of May, 1987, at Columbus, Ohio.

Irmgard Maria Hardie
Petitioner pro se
1811 2-G Bairsford Drive
Columbus, Ohio 43232
(614) 863-9485

CERTIFICATE OF SERVICE

I hereby certify that I am the Petitioner pro se in the case at bar and that pursuant to Rules 28.3 and 28.5(b) of the Rules of the Supreme Court of the United States, I this day served three (3) copies of the foregoing Petition for Writ of Certiorari upon Respondent by mailing same to counsel of Respondent, David Shimek, Esq., as required to be served. Such service was accomplished by mailing the copies first class, postage prepaid, addressed as follows: David Shimek, Esq., Attorney at Law, 2224 Arcadia Drive, Anchorage, Alaska 99503, this 28th day of May, 1987.

IRMGARD M. HARDIE

APPENDIX A

CONSTITUTION

Fourteenth Amendment, Sec. 1. All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Brinkerhoff-Faris Co. v. Hill, 281 US 873, 680, 50 S.Ct. 451, 454, 74 L.Ed. 1107 (1930).

Oyama v. California, 332 US 633 (1948).

FEDERAL STATUTE

28 USC 1257 (3) STATE COURTS; APPEAL; CERTIORARI

Final judgments or decrees rendered by the highest court of a state in which a decision could be had, may be reviewed by the Supreme Court as follows:

(3) By writ of certiorari, where the validity of a treaty or statute of the United States is drawn into question on the ground of being repugnant to the Constitution, treaties or laws of the United States,

or where any title, right, privilege or immunity is specially set up or claimed under the Constitution, treaties or statutes of, or commission held or authority exercised under, the United States.

Orr v. Orr, 440 US 268 (1978).

28 USC 1738

STATE AND TERRITORIAL STATUTES AND JUDICIAL PROCEEDINGS; FULL FAITH AND CREDIT

The acts of the legislatures and any state, territory, or possessions of the United States, or copies thereof, shall be authenticated by affixing the seal of such state, territory or possession thereto.

The records and judicial proceedings of any court of any such state, territory or possession, or copies thereof, shall be proved and admitted in other courts within the United States and its territories and possessions by attestation of the clerk and seal of the court annexed, if a seal exists, together with a certificate of a judge of the court that the said attestation is in proper form.

Such acts, records and judicial proceedings or

copies thereof, so authenticated shall have the same full faith and credit in every court within the United States and its territories and possessions as they have by law or usage in the courts of such states, territories or possessions from which they are taken.

Morris v. Jones, 329 US 545 (1947).

ALASKA STATUTES

AS 25.24.100
Residency of military personnel. A person serving in a military branch of the United States government who has been continuously stationed in a military base or installation in the state for a period of one year shall be deemed a resident in good faith of the state for the purposes of AS 25.24.010-AS 25.24.180 (Para. 12.09 ch 101 SLA 1962).

Lauterbach v. Lauterbach, 392 P.2d 24 (1964).

AS 25.24.160
Judgment. In a judgment in an action for divorce or action declaring a marriage void or at any time after judgment, the court may provide:

(3) for the recovery by one party from the other of an amount of money for maintenance, in gross or in installments, as may be just and necessary without regard to which of the parties is at fault, Lawrence v. Lawrence, 718 P.2d 142 (1986).

APPENDIX B

COPY

IN THE SUPREME COURT OF THE
STATE OF ALASKA

PHILIP WILLIAM HARDIE, JR., M.D.,	:	
Respondent/Plaintiff,	:	CASES NO.
vs.	:	4FA Civ. 71-441 and 71-801
IRMGARD MARIA HARDIE,	:	
Petitioner/Defendant.	:	

PETITION FOR REVIEW OF CERTAIN ORDERS AND EXTENSION OF TIME FOR FILING

Pursuant to AS App. Rule Civ. 403(a)(1), Petitioner, for good cause shown, pleads to this Court for extension of time to file for review of the Order of Judge Karen Hunt of December 3, 1986, denying disqualification of Judge Victor D. Carlson, and for the reason that Petitioner filed for "Peremptory Challenge for Disqualification of Judge Carlson" on December 19, 1986 for bias, extreme prejudice and partiality. Exhibit I.

1. "Peremptory challenge" for removal of Judge Carlson from the cases was warranted because there is no proof in the record of AS 71-441 and AS 71-801 that Judge Carlson at any time was assigned to the cases by the Alaska Supreme Court, and because of extreme prejudice.

2. The Order by Judge Hunt of December 3, 1986, denying disqualification of Judge Carlson, did not pre-empt Petitioner's right to "Peremptory Challenge" of Judge Carlson. At no time since 1980 was there a hearing or trial before Judge Carlson and he denied relief to the seriously ill Petitioner without due process of law, which means "to be heard." The Order of Judge Hunt must be reversed and an impartial judge assigned. Exhibit I.

3. Contrary and in violation of the mandate of AS 22.20.022, the presiding Judge Serdahaly failed to act on Petitioner's "Peremptory Challenge" of December 19, 1986, to "<u>at once</u>" remove Judge Carlson

from these cases because of extreme bias, prejudice and partiality. Exhibit II.

Petitioner Pleads for Review of Order of December 12, 1986 (Carlson, J.)

1. On January 15, 1987, petitioner received through the mails from the Clerk of Court (Superior Court Third Judicial District), her "Motion for Reinstatement of Alimony, etc." of October 14, 1986, Exhibit III, with a handwritten notation by Judge Carlson:

> "Order"
>
> Denied. 12/12/86, signed Victor D. Carlson, Judge.
>
> Filing Date: December 12, 1986
>
> Entry in Court's Journal/Docket: December 31, 1986
>
> Mailed by Clerk to the defendant: January 13, 1987

The Order of December 12, 1986 is obviously backdated by Judge Carlson for the purpose of:

(a) preventing Petitioner to appeal the "Order" on time, and

(b) circumventing the "Pre-emptory Challenge."

An Order issued by a judge and filed by the Clerk on the same date, is subject to immediate dispatch and service to the litigants. In this case, the Order of December 12, 1986 was mailed one month after the alleged date of issue. If issued later, a judge's order should cite nunc pro tunc.

The backdating of an order by a judge is an extreme and extraordinary procedural defect and shows additional bias by Judge Carlson for the purpose of denying Petitioner her Constitutional Rights of access to the courts on changed circumstances. Judge Carlson denied Petitioner justice under the laws of the United States and her equal protection rights.

The Order of December 12, 1986, must be set aside.

5. No action was taken by the Court below to "Objection to Plaintiff's Objection to Defendant's Affidavit and Statement

for Peremptory Challenge of Judge Carlson and Motion to Strike," of January 13, 1987. See File 71-441.

3. No action was taken by the Court below to petitioner's "Objection to Judge Carlson's Order of December 12, 1986," denying Petitioner reinstatement of alimony, etc. See File 71-441.

4. No action was taken by the Court below to Petitioner's "Motion to Set Aside Order of December 12, 1986," denying Petitioner reinstatement of alimony pursuant to AS Civ. Rule 60(b)(1)(2)(3)(4)(5)(6).

ARGUMENT

Petitioner, pursuant to this Court's criterion of Lawrence v. Lawrence, 718 P.2d 142 (1986), at 145, Rule 60(b)(1)(5)(6) pleads to this Court to review and set aside Judge Carlson's Order, backdated to December 12, 1986, because denial of alimony is an abuse of discretion, in this particular case.

On reverse and remand an unbiased judge or panel of judged should decide whether this wealthy physician, ex-Colonel, U.S. Army, should pay alimony to Petitioner in the future pursuant to two original final judgments and decrees from two diverse states, Florida and Alaska, and whether or not the Respondent has to pay up certain arrearages which have accumulated in his favor to approximately $100,000.00. Cf. to Complaint AS 71-801. Exhibits IV and V. The Florida Final Judgment and Decree assumed by Alaska AS 71-801, is subject to enforcement pursuant to 28 USC 1738. The Court below at no time has enforced this Florida Final Decree and Judgment for alimony.

As per January 1, 1987, to the best of Petitioner's knowledge, Judge Carlson has been removed from presiding over domestic cases, a fact which may have rendered Petitioner's "Peremptory Challenge" of December 19, 1986, superfluous and moot. The Court

may find it proper to reassign this case to an unbiased, unprejudiced and impartial judge or to a panel of judges.

The Court's due consideration of Petitioner's 60(b)(5)(6) motions of October 14, 1986 and January 22, 1987, is warranted because prior Orders and Judgments by Judge Carlson of June 19, 1980 and the backdated Order of December 12, 1986, are no longer equitable and should have no prospective application considering the circumstances. Lawrence v. Lawrence, supra, at 146, footnote 7: Jordan v. School District of Erie, 548 F.2d 117 (3rd Cir. 1977); Theriault v. Smith, 523 F.2d 603 (1st Cir. 1975).

Pursuant to Civ. Rule 60(b)(1)(2)(3)(4)(5)(6), Petitioner pleads for reversal and remand of Judge Carlson's backdated Order of December 12, 1986, and the assignment of the case to an unbiased judge or a panel of judges.

Dated this 6th day of February, 1987, at Columbus, Ohio 43232.

/s/
IRMGARD M. HARDIE
Petitioner/Defendant,
Pro Se

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the within Petition for Review of Certain Orders and Extension of Time for Filing, was mailed postage prepaid, to Respondent/Plaintiff through his attorney, addressed as follows: David Shimek, Esq., 2224 Arcadia Drive, Anchorage, Alaska 99503, this 6th day of February, 1987.

/s/
IRMGARD HARDIE

APPENDIX C

COPY

FILED Mar 17, 1987
/s/ Cir, Clerk
Appellate Courts of
the State of Alaska

IN THE SUPREME COURT OF THE
STATE OF ALASKA

IRMGARD MARIA HARDIE, Petitioner, vs. PHILIP W. HARDIE, JR., M.D., Respondent.	Supreme Court No. S-2058 O R D E R

Superior Court No. 4FA 71-441 and 71-801 Civil

On consideration of the statement filed on February 23, 1987, which has been treated as a motion for leave to file a petition for review, and the petition for review, lodged on February 23, 1987,

IT IS ORDERED:

1. The motion for leave to file a petition for review is granted. The clerk is directed to file the petition, lodged on February 23, 1987.

2. The respondent may serve and file an original and five copies of a response to the petition for review within ten days of the filing date of this order.

Entered by direction of Chief Justice Jay A. Rabinowitz at Anchorage, Alaska on March 12, 1987.

CLERK OF THE SUPREME COURT

/s/
DAVID A. LAMPEN

ccs: Justices
Counsel
Appeals Deputy Clerk, Anchorage
Trial Courts
Appeals Deputy Clerk, Fairbanks
Trial Courts

APPENDIX D

COPY

FILED Apr 13, 1987
/s/ Cir, Clerk
Appellate Courts of
the State of Alaska

IN THE SUPREME COURT OF THE
STATE OF ALASKA

IRMGARD MARIA HARDIE, Petitioner, vs. PHILIP W. HARDIE, JR., M.D., Respondent.	Supreme Court No. S-2058 O R D E R

Superior Court No. 4FA 71-441 and 71-801 Civil

Before: Rabinowitz, Chief Justice, Burke, Matthews, Compton and Moore, Justices.

On consideration of the petition for review, lodged on February 23, 1987 and filed pursuant to the order of March 17, 1987, and the response to the petition, filed on March 27, 1987,

IT IS ORDERED:

The petition for review is denied.

Entered by direction of the court of Anchorage, Alaska on April 10, 1987.

CLERK OF THE SUPREME COURT

/s/
DAVID A. LAMPEN

ccs: Justices
Counsel
Judge Victor D. Carlson
Judge Karen L. Hunt
Clerk of the Trial Courts,
Anchorage

APPENDIX E

COPY

FILED Dec. 12, 1986
Clerk of the Trial Courts
Trial Courts, State of
Alasks Third District

IN THE SUPERIOR COURT FOR
THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT

PHILIP WILLIAM HARDIE, JR., MD.,:

Plaintiff, :

vs. : Case Civil
71-441

IRMGARD MARIA HARDIE, :

Defendant. :

MOTION FOR REINSTATEMENT OF ALIMONY,
INCREASE OF ALIMONY AND ORDER FOR
MEDICAL CARE AND INSURANCE OF DEFENDANT

Pursuant to AS Civ. R.P. 60(b)(5), the previous judgment and order by this Court denying the Defendant any support, is inequitable and should be set aside. The previous award is $650 per month alimony, the Plaintiff could accumulate by fraud upon the Court and shows arrears of over $90,000 in his favor. Defendant moves

this Court for the recovery of a suitable amount of monthly alimony payments to be made by the Plaintiff for Defendant's maintenance, as may be just and necessary, without regard to which of the parties is in fault. The alimony should be set at $3,000 per month considering the rate of inflation since 1972 and the income capabilities of the Plaintiff versus the income available to the 62-year-old cancer victim Defendant who suffers from diabetes, is partially blind and literally without medical care since 1972 and without health insurance. The Plaintiff is a physician with a salary of $87,000.00 per annum, as a state employee at the Alaska Psychiatric Institute where he is director, and he collects a military pension, since his retirement in 1970, of approximately $35,000 per annum, which was not considered at time of the divorce when awards were made inequitably. There are

changed circumstances and Defendant cannot exist on non-support.

Defendant moves this Court for an equitable readjustment of support/alimony payments pursuant to the governing statutes, rules and case law of the State of Alaska.

Dated: Columbus, Ohio
October 14, 1986

/s/
IRMGARD MARIA HARDIE
Defendant Pro Se

HANDWRITTEN:

ORDER

DENIED

12-12-86

/s/ Victor D. Carlson
Judge

RECEIVED: 12/31/86
DOCUMENT SENT TO DEFENDANT: 1/13/87

APPENDIX F

COPY

FILED APR 1, 1987
Clerk of Trial Courts
Trial Courts, State of
Alaska Third District

IN THE SUPERIOR COURT OF THE
STATE OF ALASKA
THIRD JUDICIAL DISTRICT

PHILIP WILLIAM HARDIE, JR., M.D. :

Plaintiff, :

vs. : Cases No.: 71-441 FA 4 and

IRMGARD MARIA HARDIE, : 71-801

Defendant. :

MOTION TO SET ASIDE ORDER/JUDGMENT

Pursuant to AS Civ. Rule 60(b)(1)(3)(4)(5) and (6), Judge Carlson's Order of December 12, 1986, received by the Clerk of the Court for entry in the Court's Journal on December 31, 1986, and mailed to Defendant by the Clerk on January 13, 1987, received by Defendant on January 15, 1987, must be set aside because of fraud.

Points of Law

Civ. Rule 60(b)

1) The Order of December 12, 1986 represents mistake, and inexcusable neglect.

2) The Order is based on intrinsic and extrinsic fraud.

3) The Judgment is void because denial of alimony is an abuse of discretion. EX. I attached (OHIO SUPREME COURT CITATION in Kaechele v. Kaechele, (OHIO) No. 86 AP-263 (C.A. Tenth Appellate District); Gabaig v. Gabaig, 717 P.2d 835 (Alaska 1986); Hinchey v. Hinchey I, 625 P.2d 297 (1981); Hinchey v. Hinchey II, 722 P.2d 949 (1986); Bussell v. Bussell, 623 P.2d 221 (1981), Note 3; Ryfeul v. F. Ryfeul, 650 P.2d 369 (1982); Burrell v. Burrell, 696 P.2d 157 (Alaska 1984); Morlan v. Morlan, 804 P.2d 497 (Alaska 1986).

4) The Order must be set aside because it is not equitable that it should have prospective application.

5) The Order is a backdated Order by Judge Carlson and was not timely entered on December 12, 1986 for prompt and expeditious service upon the Defendant and was obviously backdated for the reason to circumvent the "Peremptory Challenge of Judge Carlson," mailed by Defendant on December 19, 1986. The order allegedly issued by Judge Carlson on December 12, 1986, was mailed to Defendant on January 13, 1987, untimely, and for the purpose of preventing Defendant and to deny her the right to appeal.

This Court has the power by independent action, after removal of Judge Carlson from the case, to set aside the "Order" of December 12, 1986.

The acts of Judge Carlson are for the purpose to deny Defendant access to the Court under Alaska Statutes to amend support/alimony payments by the wealthy

Plaintiff, and thus Judge Carlson denies Defendant justice.

/s/
Irmgard M. Hardie
Defendant Pro Se

Columbus, Ohio
This 22nd day of January, 1987

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the within Motion to Set Aside Order Judgment was mailed to the Defendant addressed as follows: David Shimek, Attorney for Defendant, at 2224 Arcadia Drive, Anchorage, Alaska 99503, postage fully prepaid, on this 22nd day of January, 1987

/s/
IRMGARD M. HARDIE

HANDWRITTEN:

ORDER

DENIED, the proper procedure was utilized, no orders were back-dated and there is no basis for reconsideration.

4/1/87

/s/ Victor Carlson
Judge

RECEIVED 4/1/87
FILED 4/6/87

APPENDIX G

COPY

IN THE CIRCUIT COURT OF
THE FIFTEENTH JUDICIAL
CIRCUIT OF FLORIDA, IN
AND FOR PALM BEACH COUNTY,
CIVIL ACTION

CASE NO. 71C 3131-Smith

IN RE: MARRIAGE OF

PHILIP W. HARDIE, JR.,)
Husband,)
and)
IRMGARD M. HARDIE,)
Wife.)

FINAL JUDGMENT

This cause came on for final hearing on October 13, 1971 upon the Petitioner's Complaint for Separate Maintenance, a default having been regularly entered by the Clerk of this Court upon Respondent's failure to answer or otherwise plead, and the

Petitioner having filed the proper notice by publication a copy of which was sent this Respondent and the Court being fully advised in the premises, the Court finds and decides as follows:

1. The Petitioner has proved the Respondent has been guilty of extreme mental cruelty and further that the Petitioner has not provided proper maintenance and support to his wife and son.

2. That the Petitioner is entitled to an award of alimony and child support from the Respondent.

ORDERED AND ADJUDGED as follows:

1. The Petitioner is granted a final judgment of Separate Maintenance from the Respondent.

2. That the award of alimony and child support be enforced wherever personal jurisdiction of this Respondent can be obtained.

3. The Court retains its jurisdiction of this case for the enforcement of this decree.

DONE AND ORDERED in chambers at West Palm Beach, Palm Beach County, Florida, this 13th day of October, A.D. 1971.

(SEAL)

/s/
CIRCUIT JUDGE

Copies furnished counsel for Petitioner and Respondent.

APPENDIX H

COPY

FILED Nov. 12, 1971
Clerk of Courts

IN THE SUPERIOR COURT FOR
THE STATE OF ALASKA
FOURTH JUDICIAL DISTRICT

IRMGARD M. HARDIE,)

Plaintiff,)

vs.)

PHILIP W. HARDIE, JR.,)

Defendant.)

No. 71-801

C O M P L A I N T

COMES NOW, Plaintiff, by and through her attorneys, Curran & Hodges, and for her complaint, states as follows:

I.

That Plaintiff, Irmgard M. Hardie, is a resident and inhabitant of the State of Florida, and is presently married to Defendant Philip W. Hardie, Jr., herein.

II.

That during the course and scope of their marriage, one child was born as a result thereof, namely, William Bruce Hardie, born January 17, 1964, and is currently residing in the care, control and custody of Plaintiff herein, in the State of Florida.

III.

That the Circuit Court of the Fifteenth Judicial Circuit of Florida in and for Palm Beach County, State of Florida, issued a final judgment with respect to separate maintenance in favor of Plaintiff herein, and against Defendant herein, awarding to Plaintiff herein, alimony and child support. A copy of said final judgment is attached hereto and incorporated by reference herein.

That Plaintiff is entitled to a reasonable amount of alimony and child support to pay to her by Defendant. Said amount

should be determined by the Court at a full hearing.

WHEREFORE, Plaintiff prays for a judgment of this Court, awarding to her a reasonable amount of alimony and child support, plus her costs and reasonable attorneys' fees.

DATED this 12th day of November, 1971.

CURRAN & HODGES
Attorneys for Plaintiff

By /s/
Jay Hodges

APPENDIX I

COPY

FILED JAN 12, 1972
Clerk of Trial Courts
Trial Court, State of
Alaska at Anchorage

IN THE SUPERIOR COURT FOR
THE STATE OF ALASKA
FOURTH JUDICIAL DISTRICT

PHILIP W. HARDIE, JR.,)

Plaintiff,)

vs.) No. 71-441

IRMGARD M. HARDIE,)

Defendant.) DECREE OF DIVORCE

This case came on for hearing before the Superior Court for the State of Alaska, Fourth Judicial District, on January 10, 1972. The Plaintiff appeared in person and by his attorney, Lyle R. Carlson. The Defendant did appear in person and by her attorney, David Bludworth. Defendant further filed her appearance and waiver to the complaint. The Court, having considered the evidence introduced by the Plaintiff in

support of the allegations of his complaint and having heretofore entered its Findings of Fact and Conclusions of Law, and being fully advised in the premises, NOW, THEREFORE, it is

ORDERED, ADJUDGED AND DECREED:

1. That the Plaintiff be and he is hereby granted an absolute divorce from the Defendant;

2. That the bonds of matrimony now existing between the Plaintiff and Defendant be, and they are hereby dissolved; and

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that custody of the minor child, Bruce Hardie, of the marriage be awarded to the Defendant, subject to reasonable rights of visitation by Plaintiff; and

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the attached agreement concerning settlement of marital rights and obligations dated January 10, 1972, be

and the same is hereby incorporated in this Decree of Divorce, as is fully set forth herein.

DATED at Fairbanks, Alaska this 12 day of January, 1972.

/s/
SUPERIOR COURT JUDGE

COPY

A G R E E M E N T

THIS AGREEMENT made this 10th day of January, 1972, by and between IRMGARD HARDIE, hereafter called the "Wife", and PHILIP H. HARDIE, JR., hereafter called the "Husband".

W I T N E S S E T H:

The parties are Husband and Wife. They were married on March 26, 1963, at Basel, Switzerland.

There is one child born of this marriage. One son, BRUCE HARDIE, age seven (7) years.

There is presently pending an action for separate maintenance between the parties in the Circuit Court of the Fifteenth Judicial Circuit of Florida, in and for Palm Beach County, the style of the case being Case No. 71C 3131 - Smith, Hardie v. Hardie, and an action for divorce in the Superior Court of the Fourth Judicial

district of Alaska, Hardie v. Hardie, Case No. 71-441.

In consequence of disputes and irreconcilable differences, the parties have separated and are now living apart. In view of their intention to live apart for the rest of their natural lives, they desire to settle their respective property rights.

Therefore, the parties agree:

1. CHILD SUPPORT AND ALIMONY: The Husband agrees to pay the sum of $750.00 to consist of $650.00 as periodic alimony and $100.00 as child support for a period of eight (8) years. At the end of that eight (8) years the Husband agrees to pay the minimum sum of $500.00 and not more than $750.00 provided the Husband's income is the same or less as in 1972. This shall consist of $400.00 alimony and $100.00 child support. This sum shall be for a period of two (2) years. The Husband agrees

to pay after this two year period the sum of $500.00 to consist of alimony of $400.00 and child support of $100.00 until the wife shall reach the age of 65. The child support shall be paid until Bruce Hardie shall reach 21 or sooner becomes self supporting. If at any time the wife remarries, alimony shall cease and the Husband agrees to pay child support to the child Bruce Hardie in the sum of $250.00 per month until he reaches 21 or is sooner self supporting.

(a) The Defendant Irmgard Hardie agrees and promises in consideration for the above stated award of alimony that as long as the Plaintiff does fully comply with all his promises and assurances herein, she will not contact directly or indirectly any of plaintiff's professional associates, his patients, or relatives concerning any matter or difficulty relating to the marriage or termination thereof.

(b) It is agreed by and between Philip H. Hardie, Jr. and Irmgard Hardie that the Dependent Bruce Hardie is and shall continue to be the dependent of Philip H. Hardie, Jr. for all purposes, including a claim of dependency for said child for all federal and state tax purposes.

2. MEDICAL AND DENTAL EXPENSES: The Husband agrees to pay the medical expenses authorized by CHAMPUS for Bruce Hardie which exceed the amount covered and paid by CHAMPUS. The Husband agrees to pay dental bills for Bruce Hardie in an amount not to exceed $250.00, provided it shall not exceed the cumulative amount of $500.00 for any two year period.

3. COLLEGE EDUCATION: The Husband agrees to provide a college education for Bruce Hardie at a college of his choice provided the amount of child support shall be applied toward the total amount of college expenses to be incurred.

4. ATTORNEYS' FEES: The Husband agrees to pay the sum of $500.00 to Jay Hodges, $750.00 to Mike Stepovich, $1,500.00 to David Bludworth, $1,000.00 to Mrs. Hardie as reimbursement for attorney's fees paid to Dr. Ostler, and $1,500.00 as court costs in this matter. The last three items to be paid within 12 months of the date of this agreement.

5. CUSTODY OF CHILD: The Wife shall have the primary custody of the child Bruce Hardie with reasonable visitation rights to the Husband.

6. MUTUAL RELEASE: Except as otherwise provided in this Agreement, each party releases the other from all claims or demands up to the date of the execution of this Agreement. Except as otherwise provided, each party waives, releases and relinquishes all rights that he or she may now have or may hereafter acquire as the

other party's spouse in the present or future laws of and jurisdiction:

(a) To elect to take against any Will or Codicil of the other party now or hereafter in force.

(b) To share in the other party's estate; and

(c) To act as Executor or Administrator of the other party's estate.

7. SUBSEQUENT DIVORCE: This Agreement may be offered in evidence by either party in any divorce action and, if acceptable to the Court, shall be incorporated in the judgment that may be rendered. All other pending actions relating to the marriage to be dismissed as soon as possible with each party to bear his own costs.

8. REPRESENTATIONS: The parties represent to each other:

(a) Each has had independent legal advice by counsel of his or her own selection

in the negotiation of this Agreement. Each party fully understands the facts and has been fully informed as to his or her legal rights and obligations, and each is signing this Agreement freely and voluntarily, intending to be bound by it.

(b) Each has made a full disclosure to the other of his or her current financial condition.

(c) Each understands and agrees that this Agreement constitutes the entire contract of the parties. It supersedes any prior understandings or agreements between them upon the subjects covered in this Agreement. There are no representations or warranties other than set forth herein.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals the day first above written.

Witnesses:

/s/ _____ /s/ _____ (SEAL)
IRMGARD HARDIE

/s/ _____
As to the Wife

/s/ /s/ (SEAL)
PHILIP H. HARDIE

/s/
As to the Husband